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FEDERAL COMMUNICATIONS COMMISSION

In re)	MM DOCKET No.: 97-122
)	
GERARD A. TURRO)	File No.: BRFT-970129YC
)	
For Renewal of License)	File No.: BRFT-970129YD
For FM Translator Stations)	
W276AQ(FM), Fort Lee, NJ,)	
and W232AL(FM), Pomona, NY)	
)	
MONTICELLO MOUNTAINTOP)	
BROADCASTING, INC.)	
Order to Show Cause Why the)	
Construction Permit for FM)	
Radio Station WJUX(FM),)	
Monticello, NY,)	
Should Not Be Revoked)	

Volume VII

Pages: 811 through 903

Place: Washington, D.C.

Date: December 4, 1997

HERITAGE REPORTING CORPORATION

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(202) 628-4888

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Monticello, NY,)	
Should Not Be Revoked)	

Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C. 20554

Thursday,
December 4, 1997

The parties met, pursuant to the notice of the
Judge, at 9:30 a.m.

BEFORE: HON. Arthur I. Steinberg
Administrative Law Judge

APPEARANCES:

On behalf of Gerald A. Turro:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Carol Montana	815	883	895	--	--

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Mass Media:</u>			
38	871		

Hearing Began: 9:30 a.m.

Hearing Ended: 12:55 p.m.

1 P R O C E E D I N G S

2 THE COURT: This is a continuation of the hearing.
3 The witness for today is going to be Carol Montana. Is that
4 correct?

5 MS. FRIEDMAN: Yes.

6 THE COURT: Okay. And Ms. Montana is represented
7 by --

8 MR. EDMUNDSON: James J. Edmundson of Gardner,
9 Carton & Douglas.

10 THE COURT: Ms. Montana is appearing pursuant to a
11 subpoena. Is that correct?

12 MS. FRIEDMAN: That is correct.

13 THE COURT: She is entitled to her counsel, and
14 she can consult with counsel before, during and after her
15 testimony. Mr. Edmundson is entitled to make objections on
16 the record, and to state the basis for the objections. And
17 at the conclusion of the examination by everybody, if Mr.
18 Edmundson wants to ask any clarifying questions, he can do
19 so with my permission.

20 Any questions about that?

21 MR. EDMUNDSON: No. Your Honor.

22 THE COURT: Okay.

23 MR. RILEY: Who will be examining, Your Honor, for
24 the Bureau?

25 THE COURT: I do not know.

1 MS. FRIEDMAN: I will be.

2 MR. RILEY: Okay. I just wanted to be sure we
3 knew at the outset, so --

4 THE COURT: It keeps the mystery in line. Okay.
5 Are you ready?

6 MS. FRIEDMAN: Yes.

7 THE COURT: Ms. Montana, why don't you come up
8 here?

9 Whereupon,

10 CAROL MONTANA

11 having been first duly sworn, was called as a witness herein
12 and was examined and testified as follows:

13 THE COURT: Please be seated. Just state your
14 name and address for the record.

15 THE WITNESS: My name is Carol Montana. My
16 address is 80 N. Gilles Road, Grahamsville, New York.

17 THE COURT: And you are appearing here today
18 because you were subpoenaed?

19 THE WITNESS: Yes. That's correct.

20 THE COURT: Ms. Friedman?

21 DIRECT EXAMINATION

22 BY MS. FRIEDMAN:

23 Q Good morning, Ms. Montana. I will be asking you
24 lots of questions this morning. If you need me to repeat
25 anything or explain anything, just let me know. If you need

1 to take a break, by all means, let us know. We want to make
2 you as comfortable as possible.

3 A Okay. One thing I need everyone to do is to speak
4 up, please, because I have a hearing loss in my left ear.

5 Q Is this better? Can you hear me now?

6 A Yes.

7 Q Should I move up, perhaps?

8 A I don't know. If I can't hear you, I'll tell you.

9 Q Ms. Montana, where are you employed?

10 A I'm employed full time by WVOS Radio in Liberty,
11 New York and part time by WJUX in Liberty, Monticello.

12 Q When were you first employed at WVOS?

13 A WVOS?

14 Q Yes.

15 A In September of 1990.

16 Q What is your job description?

17 A I'm the business manager.

18 Q What does that entail?

19 A That entails everything. In a small market radio
20 station, the business or office manager does the books,
21 enters time orders, does the billing, does the bookkeeping,
22 does the broadcast log, does the payroll. I give out
23 prizes, and I act as receptionist.

24 Q What is your weekly compensation for your work at
25 WVOS?

1 A I'm sorry?

2 Q Your salary at WVOS?

3 A At WVOS?

4 Q Yes, weekly.

5 A My take home is \$628 every two weeks.

6 Q You also mentioned that you work at WJUX. Is that
7 correct?

8 A That's correct.

9 Q When were you first employed there?

10 A In October of -- late October of 1994.

11 Q How did you learn about a position at WJUX?

12 A My boss at WVOS, Eugene Blabey, approached me, and
13 told me that he had a part time position that was available.

14 Q What did Mr. Blabey tell you about this part time
15 position? Did he explain what your duties would be? Could
16 you just elaborate?

17 A He told me it was to staff the office and to
18 answer phones, deal with the people who walk in, pick up the
19 mail, route the mail, things like that.

20 Q What would be your hours that you would be
21 required to work at WJUX?

22 A It would be the same times that I was at the radio
23 station for WVOS.

24 Q What was your starting salary at WJUX?

25 A I believe it was \$100 a month. I'm not quite

1 sure.

2 Q Who is the owner of WJUX?

3 A The owner of WJUX is Wesley Weis.

4 Q When did you first meet Mr. Weis?

5 A I met Mr. Weis sometime before October of 1994.

6 Q Did Mr. Blabey introduce you to Mr. Weis?

7 A Yes, he did.

8 Q Did you discuss this job with Mr. Weis?

9 A Yes, I did.

10 THE COURT: Watch the leading.

11 BY MS. FRIEDMAN:

12 Q Do you know Mr. Jerry Turro?

13 A Yes, I do.

14 Q When did you first meet Mr. Turro?

15 A I met Mr. Turro approximately the same time that I
16 met Mr. Weis.

17 Q Who do you report to at WJUX?

18 A At WJUX? First, I report to Mr. Eugene Blabey,
19 who is the general manager, and ultimately, to Mr. Weis.

20 Q How often do you meet with Mr. Weis?

21 A I'm sorry?

22 Q How often do you meet with Mr. Weis on WJUX
23 business?

24 A I meet with Mr. Weis on an as-needed basis.

25 Q Could you tell me when WJUX first went on the air?

1 A Late October of 1994.

2 Q At that time, October through the first few months
3 of operation, how often did you meet with Mr. Weis?

4 A I'm sorry. Could you repeat that?

5 Q You just stated that WJUX went on the air in
6 October of 1994. Do you recall in October through the end
7 of the year, how often did you meet with Mr. Weis?

8 A I don't recall how often that was.

9 Q During the first few months of operation, did you
10 see Mr. Turro at the station at any time?

11 A Yes, I did.

12 Q Could you say how often?

13 A I don't recall how often I saw him either.

14 Q Was it on a regular basis or intermittent?

15 A I don't recall how often I saw Mr. Turro.

16 Q Did Mr. Turro talk to you when he was at the
17 station?

18 A I'm sorry?

19 Q Did Mr. Turro speak with you?

20 A Yes, he did.

21 Q Do you recall any of the conversations?

22 A Not specifically, no.

23 Q Do you have a separate office for when you work
24 for WVOS, as opposed to WJUX?

25 A I'm sorry? Do I have a second office?

1 Q Separate.

2 A No. It is not a separate office.

3 Q You have one office?

4 A That's correct.

5 Q Could you describe what you do for WJUX?

6 A I arrive at the post office approximately 9:00 on
7 a Monday through Friday basis. And I pick up the mail for
8 both WVOs And WJUX. When I get back to the office at
9 approximately 9:15, 9:20, I distribute the mail. If there's
10 anything in the mail that needs the attention of Mr. Weis or
11 Mr. Blabey, I make sure that they see a copy of it.

12 Throughout the day the phone would ring for WJUX,
13 and I would take care of whatever the caller wants. I do
14 a -- I fax to the network a bulletin board on an every other
15 day basis, to get the public service announcements on WJUX.
16 I will bring any bills to the attention of Mr. Blabey and
17 Mr. Weis for payment. I handle petty cash if needed. And I
18 deal with walk-ins.

19 Q When the station first went on the air in October,
20 1994, was there a telephone in the office to receive calls
21 from people calling WJUX?

22 A There was no telephone in my office at that time.

23 Q If somebody in the community wished to call WJUX,
24 where did they call?

25 A The community somehow found out that the WJUX

1 studio was at the WVOS studio and called on the WVOS line.

2 Q Ms. Montana, was there a telephone anywhere at the
3 WJUX premises that was a telephone for WJUX callers?

4 A Not to my knowledge.

5 Q Was there a telephone number listed with directory
6 assistance for WJUX?

7 A I don't know.

8 Q Was there a sign outside the WJUX studio to
9 indicate that the station was located there?

10 A Not when WJUX first went on the air.

11 Q So, how did people know that WJUX was, in fact,
12 located there?

13 A They knew.

14 MR. RILEY: Your Honor, I think we all know in the
15 record, the time that Mr. Friedman is talking about WJUX, it
16 was WXTM. The only question that that would have any
17 significant bearing was whether it was a telephone listing
18 for WJUX. At that time, there could not have been.

19 THE COURT: Why don't you ask about the other call
20 letters just to be complete?

21 THE WITNESS: Refer to it as WXTM.

22 THE COURT: Well, when Ms. Friedman asked you
23 questions about WJUX from the late October period, until
24 there was a call sign change, when she said WJUX, did you
25 answer in terms of both WXTM and WJUX?

1 THE WITNESS: Yes, I did.

2 THE COURT: Okay. And another point of
3 clarification, you said earlier that you faxed to the
4 network bulletin boards announcements --

5 THE WITNESS: That's correct.

6 THE COURT: -- and things for public service
7 announcements. What network are you referring to?

8 THE WITNESS: I referred to the Jukebox Radio
9 Network.

10 THE COURT: Okay. Where are they located?

11 THE WITNESS: They're located in Dumont, New
12 Jersey.

13 BY MS. FRIEDMAN:

14 Q Ms. Montana, do you have a title at WJUX?

15 A Yes, I do. It's Public Affairs Director.

16 Q What do you do as Public Affairs Director?

17 A I represent WJUX in the community. And I also --
18 as I stated before, make sure that the public service
19 announcements of interest to the community get on the air.

20 Q How exactly do you represent the station in the
21 community? Could you give me an example?

22 A I've lived in Sullivan County for almost 20 years
23 now, and I know a lot of people. People know that I work
24 for WJUX, and that I represent them in the community. And
25 they will tell me about relevant happenings for both WJUX

1 and WVOS.

2 Q Do you ever actively go out in the community to
3 represent WJUX?

4 A Could you define actively?

5 Q For example, do you belong to any civic groups or
6 charitable organizations for the specific purpose of
7 representing WJUX?

8 A No, I do not.

9 Q You testified that you sent public affairs
10 information to Jukebox Radio?

11 A That's correct.

12 Q Who do you send it to?

13 A I don't send it to anyone specifically. I fax it
14 to the network.

15 Q So you just send it on the fax machine --

16 A I have spoken with Marty at WJUX -- I'm sorry. I
17 mean at Jukebox Radio. And she knows I'm going to do this
18 on a every other day basis so, now I don't need to make it
19 to anyone's specific attention. She knows it's coming.

20 Q Do you have a last name for this person?

21 A I'm sorry? No. I just know her as Marty.

22 Q Okay. Ms. Montana, you just stated that you make
23 sure the public service announcements are broadcast. Could
24 you elaborate how you make sure that happens?

25 A I hear them.

1 Q Okay. When you say you forward these public
2 service announcements to WJUX, do you look at them? Do you
3 make any judgment calls as to what goes and what does not go
4 on?

5 A When I pick up the mail at the post office, there
6 are sometimes many public service announcements. There are
7 sometimes few. WVOX has, at times, a five page bulletin
8 board. And sometimes I have to make arbitrary judgments as
9 to what gets on and what does not.

10 In the course of my day, as I compose the bulletin
11 board, I might leave some stuff to the side for another day,
12 or I might throw it away. The finished product gets faxed
13 to Jukebox Radio Network, and they can decide on their end
14 what needs to be done.

15 Q Do you ever consult with Mr. Blabey about
16 decisions concerning public service announcements?

17 A I'm sorry? Decisions regarding --

18 Q Do you ever consult with Mr. Blabey about
19 decisions concerning public service announcements?

20 A No, I do not.

21 Q Do you ever consult with Mr. Weis?

22 A No, I do not.

23 THE COURT: Let me just interrupt here. When you
24 pick up the mail, in the mail are notices of activities of
25 interest to the community?

1 THE WITNESS: That's correct.

2 THE COURT: People know to send them to you?

3 THE WITNESS: That's correct.

4 THE COURT: Or to send them to the station, WJUX?

5 THE WITNESS: They know to send them to WVOS and
6 WJUX. I get public service announcements addressed to both
7 radio stations.

8 THE COURT: And then you open them up. These are
9 community events? A meeting here --

10 THE WITNESS: A meeting here a chicken barbecue
11 there. Sometimes one might believe that something is more
12 important than something else. That's an arbitrary
13 judgment.

14 THE COURT: But basically, things that are going
15 on in the community?

16 THE WITNESS: Yes.

17 THE COURT: And that the sponsors or the senders
18 want publicized?

19 THE WITNESS: That's correct.

20 THE COURT: Charitable events and things like
21 that?

22 THE WITNESS: The bulletin board is limited to
23 not-for-profit organizations.

24 THE COURT: Okay. And you get back to the office,
25 open them up, and then make a determination as to which you

1 believe warrant air time?

2 THE WITNESS: That's not quite correct. I file
3 all of them in a tickler file that has dates on it.

4 THE COURT: Okay.

5 THE WITNESS: And as I am composing the bulletin
6 board, if I have too much of one thing or its gets to be
7 unwieldy with too many pages, I might discard something that
8 did not come in with the two weeks notice.

9 THE COURT: What is on your bulletin board? Tell
10 me what the layout is.

11 THE WITNESS: I divided our bulletin board into
12 categories. The first category is arts, literature, and
13 things like that. And that category contains performances,
14 whether of the dramatic or choral nature or ballet. The
15 second category is dinner meetings or luncheon meetings.
16 The third category is what I call general stuff that doesn't
17 fit into any other category. Then, there's a category for
18 Board of Education meetings. And the last one is Defensive
19 Driving.

20 THE COURT: Then you make a determination as to
21 what goes on the bulletin board and then type it up?

22 THE WITNESS: That's correct.

23 THE COURT: And then fax it to Jukebox Radio
24 Network?

25 THE WITNESS: That's correct.

1 THE COURT: Does Jukebox Ratio Network do the
2 production for the psa's?

3 THE WITNESS: Yes, they do.

4 THE COURT: Did you have any authority to instruct
5 Jukebox Radio which items on the bulletin board to make into
6 announcements?

7 THE WITNESS: If I feel strongly about one or two
8 specific items, I can put a note on there -- on the bulletin
9 board that I fax, and tell them I think this is really
10 important. You should do something about this. They have
11 on, just about every occasion, taken my advice.

12 THE COURT: But some items that you include on
13 your bulletin board are not ultimately made into public
14 service announcements.

15 THE WITNESS: This is correct.

16 THE COURT: Do you know why?

17 THE WITNESS: Probably because the list is so
18 unwieldy. If you have five pages of chicken barbecues -- At
19 some point, you have to decide how much air time you can
20 give to this free stuff. And personally, I think it's more
21 important to say that, 'Tom's Soup Kitchen is having a
22 Thanksgiving dinner for those in need,' then it is to say
23 that, 'The First Presbyterian Church of Monticello has a
24 Christmas craft fair.'

25 THE COURT: Okay. But the determination as to

1 that is made by Jukebox Radic?

2 THE WITNESS: That's correct.

3 BY MS. FRIEDMAN:

4 Q Ms. Montana, do you remember giving your
5 deposition in this case on July 1 of this year?

6 A Yes, I do.

7 Q Okay. Do you remember --

8 MR. EDMUNDSON: Your Honor, if she is going to ask
9 a question about the deposition, I think Ms. Montana ought
10 to have a copy.

11 THE COURT: I agree. Is this a matter of an
12 answer today being different from the answer in the
13 deposition?

14 MS. FRIEDMAN: Yes.

15 THE COURT: Okay. Then why don't you show Ms.
16 Montana the deposition, and point her attention to that
17 specific portion.

18 MR. EDMUNDSON: Let the record reflect that I am
19 handing the witness a deposition of Carol Montana taken July
20 1 and comprised of 79 pages. We do have Ms. Montana's
21 signature on the depositions. I can make them available to
22 the Judge, to the parties, if they need it. But anyway,
23 that was transmitted to the reporter. The copy she has is
24 unexecuted.

25

1 BY MS. FRIEDMAN:

2 Q Ms. Montana, can I direct you to Page 10 of your
3 deposition?

4 A Okay.

5 Q Line 24 is a question.

6 A Okay.

7 Q Could you read it to yourself?

8 A Okay.

9 Q And it carries over to the next page.

10 A Okay.

11 Q And your answer to that question --

12 MR. RILEY: Well, Your Honor. I object to that.

13 THE COURT: Well, everybody else in the room
14 knows, because they can read it. I do not know it.

15 MR. RILEY: But the record will not reflect it.

16 THE COURT: The record will not reflect it. I
17 know.

18 MR. RILEY: I know what the question is.

19 THE COURT: Why don't you have Ms. Montana read
20 the question and the answer?

21 THE WITNESS: Q: In your capacity as Public
22 Affairs Director, do you make any programming choices for
23 the respective public affairs material.

24 A No, I do not.

25 MR. RILEY: Well, Your Honor, I think Ms. Friedman

1 needs to show for the record, that is not in any way in
2 conflict with the testimony Ms. Montana gave earlier about
3 public service announcements.

4 THE COURT: I understand what Ms. Friedman is
5 pointing out. And if she wants to clarify it, she can
6 clarify it. And if she does not want to clarify, then you
7 can clarify it.

8 MR. RILEY: I will then, Your Honor. Thank you.

9 THE COURT: But I can see the point.

10 MR. RILEY: I will clarify it, Your Honor.

11 THE COURT: I also know what the answer is going
12 to be, too, but I am not under oath.

13 MS. FRIEDMAN: Excuse me, Your Honor, in the heat
14 of the trial, I was directing Ms. Montana to the wrong page
15 of the deposition.

16 THE COURT: Okay.

17 BY MS. FRIEDMAN:

18 Q Please turn to Page 11.

19 A Okay.

20 Q Line 23.

21 A Line 20?

22 Q Line 23.

23 A I'm sorry?

24 Q Line 23.

25 A Line 23.

1 MR. RILEY: Your Honor, before Ms. Friedman goes
2 further, I wonder if she wants to make a statement for the
3 record that the testimony she elicited a moment ago from Ms.
4 Montana is not, in Ms. Friedman's view, contradictory to her
5 live testimony this morning, because it seems to me she is
6 now saying, 'I sent her to the wrong part of the
7 deposition.'

8 THE COURT: It is up to Ms. Friedman. You can
9 still clarify, because there might be something that needs
10 clarification

11 MS. FRIEDMAN: I reserve the opportunity to go
12 back to that.

13 THE COURT: You can go back as many times as you
14 want with reason.

15 MS. FRIEDMAN: Okay.

16 BY MS. FRIEDMAN:

17 Q You are now on Page 11, Line 23.

18 A Do you want me to read that?

19 Q Yes. Would you read that to yourself first?

20 THE COURT: Why don't you read it aloud, and then
21 we can see where we go from there.

22 THE WITNESS: Q When you receive public affairs
23 information, which you say you forward along the line, where
24 do you forward that?

25 A: I forward that to the Network.

1 BY MS. FRIEDMAN:

2 Q And the next question and answer?

3 A Q And who do you forward that to at the
4 Network?

5 A No one specific. I just fax it.

6 Q Ms. Montana, you just testified that you write
7 notes on these faxes and you make some decisions. And here
8 you say you just fax it. Could you explain the discrepancy?

9 MR. RILEY: Your Honor I made a comment the other
10 day about the difference between an adverse witness and a
11 hostile witness. I think it is offensive to a witness to
12 deliberately cause confusion. And I, without making any
13 testimony for the record, refer Ms. Friedman to Page 45 of
14 Ms. Montana's deposition transcript before she proceeds with
15 this line.

16 MS. FRIEDMAN: Mr. Riley, explain --

17 MR. RILEY: Okay. I admit. I will just go back
18 and clarify this.

19 THE COURT: Okay. Let Ms. Friedman proceed.

20 MR. RILEY: All right

21 THE COURT: Basically, the pending question is, in
22 your deposition you say that you faxed the bulletin board or
23 the public service announcement stuff to no one specific.
24 But here, you mentioned the name Marty. Your testimony was
25 that you would just fax it to the Network?

1 THE WITNESS: That's correct.

2 THE COURT: But the faxes do not say, "To
3 Marty" --

4 THE WITNESS: Yes.

5 THE COURT: It just says, "Jukebox Radio."

6 THE WITNESS: No. I do not include a cover sheet
7 with it. It seems redundant. They know they are going to
8 get it on an every other day basis, and I know there's
9 someone down there who's going to take care of it, so I
10 don't feel that I need to direct it to anyone's attention.

11 THE COURT: Why don't you explain again who the
12 Marty is, and why you do not put a name on it.

13 Don't you put Marty's name on the fax?

14 THE WITNESS: Marty, I know as the person who
15 answers the phone at the Jukebox Radio Network. I don't
16 know what her title is. I don't put anybody's name on the
17 fax, because when I know a fax is coming, I don't feel it's
18 necessary to waste a cover page.

19 BY MS. FRIEDMAN:

20 Q Ms. Montana, you fax this information to Jukebox
21 Radio?

22 A That's correct.

23 Q Do you ever talk to Marty or anyone else at
24 Jukebox Radio about putting these announcements on the air?

25 A I don't talk to Marty I'm sorry. If there's

1 something that I think is extremely important on the
2 bulletin board or any other kind of public service
3 announcement, as far as a snow closing emergency, or
4 anything like that, yes. I will talk to someone at the
5 Jukebox Radio Network.

6 Q But, Ms. Montana, let's just say this is just an
7 ordinary public announcement list. No particular
8 emergencies or special events. Do you ever discuss it with
9 anyone at Jukebox Radio?

10 A No.

11 Q Do you make the decision as to what announcements
12 are broadcast over WJUX?

13 A Over WJUX?

14 Q Yes.

15 A No, I do not.

16 Q Ms. Montana, do you consider yourself an employee
17 of WJUX?

18 A I'm sorry. Do I consider myself?

19 Q Yes. An employee?

20 A Yes, I do.

21 Q Do you consider Mr. Blabey an employee?

22 A No, I do not.

23 Q What would you consider Mr. Blabey?

24 A Mr. Blabey is a consultant who serves as general
25 manager.